# REMARKS

Claims 1-23 are pending.

Claims 4-5 and 16-17 are objected to.

Claims 1-3, 6-15 and 18-23 are rejected.

The office Action dated January 4, 2006 initially indicates that claims 1-3, 6-15 and 18-23 are rejected under 35 USC §103 as being unpatentable over Fitzpatrick U.S. Patent No. 5,835,625 in view of Golin U.S. Patent No. 5,079,630. However, the reasons for rejection reveal that the '103 rejection is actually made over Fitzpatrick in view of Drocourt U.S. Patent No. 5,891,394 and Webb. This '103 rejection is respectfully traversed.

Claim 1 recites a method of identifying at least one predominant color in a digital image. The method comprises applying a detection rule to randomly-selected pixels in the image. The rule includes testing specific colors among the randomly selected pixels to reduce the probability of at least one of a false-positive outcome and a false-negative outcome.

Fitzpatrick does not teach or suggest a method for identifying a predominant color. Fitzpatrick states that a predominant color is identified at block 227 of Figure 4 (column 7, lines 25-28), but does not indicate how.

The predominant color appears to be known in advance. Fitzpatrick's method relates to optical character recognition of characters having known color attributes (col. 1, lines 18-27). In color coded OCR, colors are used to indicate the identify of characters (col. 2, lines 8-16).

Fitzpatrick simply makes use of a known predominant color. Fitzpatrick identifies a character by guessing its identify based on a geometric feature (col. 2, lines 47-50), and then confirming the identify by examining sampling a plurality

of pixels, identifying those pixels that <u>do not</u> have the predominant color, and determining a proportion of sampled pixels having the predominant color to those not having the predominant color, and comparing the proportion to a "preselected range" (col. 2, lines 50-60).

The other cited documents do not teach or suggest a method of identifying a predominant color. Drocourt describes a method of counting microorganisms by fluorescence (col. 1, lines 10-12). A laser beam is focused on a target, which causes microorganisms in the target to fluoresce (col. 10, lines 62-64). Two photomultipliers detect fluorescence at green and red wavelengths (col. 11, lines 1-3). Signals generated by the photomultipliers are analyzed by a DSP (col. 11, lines 16-17). As part of the analysis, the DSP computes a ratio of fluorescent intensity in the red channel to fluorescent intensity in the green channel (col. 15, lines 23-28) and uses this ratio to eliminate fluorescent particles other than microorganisms (col. 15, lines 33-34).

Drocourt is not even analogous art within the meaning of the MPEP. MPEP 2141 states "In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." The applicant's endeavor is identifying a predominant color in a digital image, whereas Drocourt's endeavor is counting the number of microorganisms carried by a solid support (col. 1, lines 10-14). The applicant is concerned with improving the accuracy of identifying a predominant color in a digital image, whereas Drocourt is concerned with the problem of discriminating fluorescing microorganisms from particles that are naturally fluorescent (col. 1, lines 64-67).

The office action alleges that Webb provides motivation for modifying Fitzpatrick in accordance with Drocourt. This a non-issue. There is nothing to

modify, since Fitzpatrick does not teach or suggest a method for identifying a predominant color.

The office action also indicates that claims 6-12 and 18-22 are rejected over Fitzpatrick, Drocourt and Webb in further view of Henderson U.S. Patent No. 6,011,595. Henderson discloses a method of segmenting a foreground object from a non-descript background in a digital image (e.g., segmenting a person from a backdrop such as a blue screen). Henderson's method includes measuring the color of the background, and determining a key color range based on the measured background color (col. 5, line 10 to col. 8, line 31; and column 9, lines 6-49). The key color range is used to identify colors that are considered part of the background (and not the foreground). All colors in the key color range are assumed to be part of the background.

Henderson provides a table for indicating the colors that belong to the key color range. The table does not keep track of the number of times that each of these colors occurs in the background. Therefore, the table does not identify a predominant color.

The office action states that the features of claims 6-12 and 18-22 are rendered obvious by Henderson, but it is not clear why. For instance, claim recites that a color occurrence list is created via a detection rule, and claims 7-10 recites features for creating the list. The examiner appears to ignore these features.

Applicants' attorney Hugh Gortler called SPE Kamini Shah on March 20, 2006 and left a message requesting supervisor intervention. Subjects for discussion were to include (1) whether the supervisor sees a method of identifying a predominant color in Fitzpatrick, (2) how Drocourt (a method counting microorganisms by fluorescence) is relevant or even analogous; and (3)

where Henderson discloses that a color list is created per claims 7-12 and 19-22. Unfortunately, the discussion never took place.

Claims 3 and 15 are objected to for not further limiting the subject matter of previous claims. Claims 3 and 15 have been amended to overcome these objections.

Withdrawal of the rejections is respectfully requested. The examiner is encouraged to contact applicant's attorney Hugh Gortler to resolve any issues that might remain.

Respectfully submitted,


/Hugh Gortler #33,890/
Hugh P. Gortler
Reg. No. 33,890

Hewlett-Packard Company
Intellectual Property Administration
P.O. Box 272400
Fort Collins, Colorado   80527-2400

(949) 454-0898


Date: May 19, 2006